

**THIS DISPOSITION
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OF THE T.T.A.B.**

3/14/02

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Boot Royalty Company, L.P.

Serial No. 75/938,994

Charles S. Cotropia of Sidley Austin Brown & Wood.

Brian A. Rupp, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Simms, Cissel and Hanak, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge.

Boot Royalty Company, L.P. (applicant) seeks to
register in typed drawing form PRESSURE BALANCE ORTHOTIC
for "orthopedic insoles sold separately" and "orthopedic
insoles sold as an integral part of boots and shoes."
The intent-to-use application was filed on March 8, 2000.

The Examining Attorney has refused registration on
the basis that applicant's mark, as applied to
applicant's goods, is merely descriptive pursuant to
Section 2(e)(1) of the Trademark Act.

When the refusal to register was made final,
applicant appealed to this Board. Applicant and the

Examining Attorney filed briefs. Applicant did not request a hearing.

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A mark is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act if it immediately conveys information about a significant quality or characteristic of the relevant goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed and Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986). In order to be held merely descriptive, a term need not immediately convey information about all of the significant qualities or characteristics of the relevant goods or services. A term is merely descriptive if it immediately conveys information about "one of the qualities" of the relevant goods or services. Gyulay, 3 USPQ2d at 1010.

As a preliminary matter, we note that applicant, at the request of the Examining Attorney, has disclaimed the exclusive right to use the word ORTHOTIC apart from the mark in its entirety. In this regard, we take cognizance of the fact that at page 5 of its brief, applicant has stated that "orthopedic insoles can be classified within

a very broad category of corrective devices referred to as orthotics."

In arguing that its mark PRESSURE BALANCE ORTHOTIC is not merely descriptive of orthopedic insoles, applicant

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states at page 7 of its brief that the individual words in its mark are redundant, and have double meanings. In this regard, applicant places a great deal of reliance on a decision of this Board which the Board determined had no precedential value, namely, In re On Technology Corp., 41 USPQ2d 1475 (TTAB 1996) (unpublished). In that non-precedential case, the Board stated that "while the words AUDIT and TRACK are undeniably descriptive [of computer software for monitoring activity on a computer network]," the Board went on to note that "combining the words AUDIT and TRACK into the mark AUDITTRACK creates a redundancy since the network auditing done by applicant's computer software is essentially the tracking of selected user activities." 41 USPQ2d at 1477.

In stark contrast to the words "audit" and "track," the first two words in applicant's mark ("pressure" and

"balance") have decidedly different meanings which create no redundancy. This latter point is beyond dispute, as applicant acknowledges at page 8 of its brief when it states that "the individual terms 'pressure' and 'balance' have different meanings."

Having rejected applicant's redundancy argument, we

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turn to a consideration of applicant's argument that the words in its mark have "double meanings." (Applicant's brief page 7). Considering first the word "pressure," applicant argues that this word "has a double meaning: (a) the application of force to areas of the plantar surface of the foot; and (b) the mental stress associated with athletic competition." (Applicant's brief page 7). Our response to applicant's contention is quite simple. Applicant does not seek to register its mark for orthopedic insoles for use solely by athletes, much less advanced athletes in athletic competition. Hence, as applied to orthopedic insoles in general, the word "pressure" has no such double meaning.

Turning to the word "balance," applicant argues at page 7 of its brief that as applied to orthopedic

insoles, this word has three meanings, which are as follows: "(a) the equalization of forces exerted on the foot during specific activities; (b) the equalization of forces experienced by a foot to compensate for a specific foot, ankle, leg, knee, or hip abnormalities; and (c) the overall physical equilibrium of a consumer during physical activities, whether athletic or otherwise." To cut to the quick, we find that the first and second purported different meanings of the term

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"balance" are essentially the same. To elaborate, the equalization of forces exerted on the foot "during specific activities" is essentially the same as the equalization of forces experienced by the foot to compensate for foot abnormalities. The phrase "during specific activities" is assumed because when a foot is "at rest" (e.g. in bed), there is no need for any insole or shoe. Moreover, applicant has never contended that if a foot and leg were totally normal, that there would still exist the need for an orthopedic insole. Finally, the overall physical equilibrium (equalization) of a consumer during physical activities in general is simply

the intended result of the equalization of forces exerted on the foot or the equalization of forces experienced by a foot. Again, applicant's reference to the word "athletic" vis-à-vis the third possible meaning of the term "balance" is misplaced because, as previously explained, applicant is seeking to register its mark for "orthopedic insoles" and not "orthopedic insoles used for athletic competition."

As applied to orthopedic insoles, we find that the purported mark PRESSURE BALANCE ORTHOTIC would be readily understood as meaning that the insoles, which applicant

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concedes are orthotic devices, function to balance the pressure on the user's feet. Indeed, at page 8 of its brief, applicant very cogently explains how consumers would view the phrase "pressure balance" when applied to orthopedic insoles, one type of an orthotic device.

"Specifically, the phrase 'pressure balance' denotes a balancing of the pressure experienced by the consumer's foot, thus indicating a corrective insole or an activity-specific insole wherein one area of the consumer's foot experiences more stresses."

Applicant has conceded that orthopedic insoles are one type of an orthotic device. Furthermore, applicant

has conceded that the modifying phrase "pressure balance" has, when used in connection with orthopedic insoles, a specific meaning, namely, the "balancing of the pressure experienced by the consumer's foot, thus indicating a corrective insole or an activity-specific insole wherein one area of the consumer's foot experiences more stresses." Applicant's own words speak for themselves. This Board could not have better articulated the descriptive significance of the mark PRESSURE BALANCE ORTHOTIC than applicant itself did at page 8 of its brief.

While this argument was not raised by applicant, we will concede that the hypothetical mark BALANCE THE PRESSURE

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ORTHOTIC would be even more descriptive as applied to orthopedic insoles. However, we are of the belief that the mere reversal of the words BALANCE and PRESSURE and the deletion of the word THE does not result in a "mark" which is simply suggestive of, and not merely descriptive of, orthopedic insoles.

Decision: The refusal to register on the basis that applicant's mark is merely descriptive of orthopedic insoles is affirmed.